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IN THE
Supreme Court of the United States
OCTOBER TERM, 1940

No. 317

MARY A. HUFFMAN,

vs.

THE CITY OF WICHITA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF KANSAS

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VINCENT E. HARRIS
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No. 317

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THE CITY OF WICHITA, *Respondent.*

**BRIEF OF RESPONDENT IN OPPOSITION TO
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SUPREME COURT OF THE STATE OF KANSAS.**

Comes now the respondent in the above entitled case and opposes the granting of a writ of certiorari to the Supreme Court of the State of Kansas for the following reasons, to-wit:

I. That petitioner failed to raise any federal question in the trial of this action in the District Court of Sedgwick County, Kansas or in the appeal and hearing before the Supreme Court of the State of Kansas.

II. That the first time any attempt was made to raise a federal question, to-wit: that the decision invaded the petitioner's rights under the Fourteenth Amendment to the Constitution of the United States was when the petitioner filed a petition for rehearing in the Supreme Court of the State of Kansas.

AUTHORITIES IN SUPPORT OF RESPONDENT'S CONTENTION.

I.

FAILURE OF THE PETITIONER TO RAISE ANY FEDERAL QUESTION IN THE TRIAL OF THIS ACTION IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS OR IN THE APPEAL AND HEARING BEFORE THE SUPREME COURT OF THE STATE OF KANSAS BARS HER RIGHT TO A WRIT OF CERTIORARI.

Hulbert v. City of Chicago, 202 U. S. 275, 279.

Burt v. Smith, 203 U. S. 129, 135.

Mallors v. Commercial Loan & Trust Co., 216 U. S. 613.

Capital City Dairy Co. v. Ohio, 183 U. S. 238, 248.

American Surety Co. v. Baldwin, 287 U. S. 156.

II.

THE ATTEMPT TO RAISE A FEDERAL QUESTION FOR THE FIRST TIME IN A PETITION FOR REHEARING IN THE SUPREME COURT OF THE STATE OF KANSAS COMES TOO LATE TO ENTITLE THE PETITIONER TO A WRIT.

American Surety Co. v. Baldwin, 287 U. S. 156.

Live Oak Water Users' Assoc. v. Railroad Commission, 269 U. S. 354.

- Rooker v. Fidelity Trust Co.*, 261 U. S. 114.
Godchaux Company, Inc. v. Estopinal, 251 U. S.
 179.
St. Louis & San Francisco Railroad Co. v. Shepherd, 240 U. S. 240.

ARGUMENT.

In addition to the foregoing authorities, counsel for the respondent desire to point out various parts of the transcript of the record to show to this Court that under said decisions the petitioner is not entitled to a writ of certiorari.

The answer to the amended petition filed by the petitioner, then defendant, in the District Court of Sedgwick County, Kansas, is set forth at pages 21 to 23 of the transcript of the record. In said answer it will be noted that no claim was made that the rights of the petitioner under the Constitution might be invaded and that no federal question was raised.

At the close of the introduction of evidence in the lower court by the plaintiff, the defendant therein, petitioner here, demurred to the evidence (R. 41-46) and again raised no federal question.

At the close of the introduction of evidence in the lower court, the defendant therein, petitioner here, filed a motion for judgment on the record and for special findings (R. 76) and again failed to raise any federal question.

After the decision in the lower court, the defendant therein, petitioner here, filed a motion for a new trial (R. 77-79), and raised no federal question therein.

Upon appeal to the Supreme Court of the State of Kansas, the defendant therein and petitioner here made specifications of error (R. 88-89), and again failed to raise any federal question or make any claim that the rights guaranteed to said defendant under the Constitution had been invaded by said judgment.

The opinion of the Supreme Court of Kansas upon the issues involved (R. 134-146) shows that neither was there any federal question raised in said hearing nor was any consideration given by said court to any contention that the rights of the appellant and petitioner here as guaranteed by the Constitution of the United States were invaded.

The first time any attempt was made to raise the question as to whether or not the petitioner's rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States, or section 1 of the Bill of Rights and Constitution of Kansas, or section 3 of Article II of the Constitution of Kansas were invaded, was at the conclusion of the petition for rehearing (R. 171-172), wherein the petitioner, appellant therein, stated as follows:

"It (the opinion) not only does violence to reason, but the result would constitute invasion of appellant's rights under the 14th Amendment to the Constitution of the United States, Section 1 of the Bill of Rights of the Constitution of Kansas, and perhaps Section 3 of Article 2 of the Constitution of the State of Kansas."

Counsel for the respondent respectfully submit:

1. That no federal question is involved giving this court jurisdiction as shown by the petition for the writ filed by the petitioner herein.

2. That no federal question was raised by the petitioner in the proceedings in the state court until after the opinion and decision of the Supreme Court of Kansas.

3. That the attempt to raise a federal question in the petition for rehearing filed in the Supreme Court of Kansas after the decision was not seasonably made and does not give this court jurisdiction to proceed further or to issue a writ of certiorari to the Supreme Court of the State of Kansas.

Respectfully submitted,

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